

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION				
LWZ315 – Corporations Law	<table> <tr> <td>Reading Time:</td><td>20 minutes</td></tr> <tr> <td>Writing Time:</td><td>120 minutes</td></tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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INSTRUCTIONS TO CANDIDATES

SECTION A- Short essay question

Please note that this section has an either/or choice. **Answer only one question in this section.**

SECTION B - Problem Questions

Answer all questions in this section.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book 4 x Scrap Paper

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DOUBLE-SIDED.**

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SECTION A

Short essay questions

Total number of marks for this section: 10 marks

This section should be answered in the answer booklet provided.

Please note that this section has an either/or choice. **Answer only one question in this section.**

Suggested time allocation for **Section A:** **20 minutes**

Question 1

EITHER

Section 177 restricts the use of information contained in registers kept under the *Corporations Act*. In its submission to the Department of Treasury in relation to s177 (1A) of the *Corporations Act*, IMF (Australia) Ltd proposed s177 (1 A) be amended to read as follows:

Subsection (1) does not apply if the use or disclosure of the information is relevant to any action that may be taken arising out of the acquisition, holding or disposal of the interests recorded in the register.

Explain why IMF recommended this amendment and discuss whether such an amendment is required or desirable.

10 Marks

OR

“After all, one expects management including the directors to take calculated risks. The very nature of commercial activity necessarily involves uncertainty and risk taking. The pursuit of an activity that might entail a foreseeable risk of harm does not of itself establish a contravention of s180. Moreover a failed activity pursued by the directors which causes loss to the company does not of itself establish a contravention of s 180” per Beach J in ASIC V Mariner Corporation Limited (2015) 106 ACSR 343.

Does the *Corporations Act* sufficiently protect directors from breach of duty arising from the exercise of their business judgement?

10 Marks

SECTION B

Problem Questions

Total number of marks for this section: 50 marks

This section should be answered in the answer booklet provided.

Answer all questions in this section.

Marks for each question are indicated. Suggested time allocation for **Section B: 100 minutes**

Question 2

Jess and Sam are directors and shareholders of Higher Ed Invigilators Pty Ltd, ("HEI"). Each of them holds 5 ordinary shares. HEI specialises in providing invigilators to supervise examinations conducted on behalf of universities and other education and training providers throughout Australia. HEI has expanded rapidly and needs additional funds, particularly for development of its online exam invigilation model. Two years ago, HEI was making a small profit but Jess and Sam were employed full-time at the local university in order to make ends meet. Their acquaintance Ned, a businessman, living temporarily in Singapore, agreed to invest \$100,000 in return for 2 ordinary shares and becoming a director. Board meetings were held on an ad hoc basis and Ned attended by video conference. Effectively, Jess and Sam had day to day control of the business.

The online exam invigilation model proved to be very successful. Jess and Sam resigned from their university jobs and commenced working full-time for HEI. HEI paid each of them an extremely lucrative salary, and leased expensive new company cars for their use.

After 2 years Ned returned from Singapore and announced he expected to be more involved in the management of HEI and to receive a strong dividend on his investment. Sam and Jess advised that it is unlikely a dividend will be paid for another few years in order to enable HEI to consolidate its position and continue with global expansion. The discussions became heated and Ned told Jess and Sam he will *"see them in court."*

Advise Ned of what remedies (if any) are available to him?

10 Marks - Suggested time 20 minutes

Question 3

Crocital Systems Pty Ltd (CSP) provides an IT consultancy and development service that specialises in cloud computing. The directors are Brenda and her husband Alan. Both are also company secretaries. CSP was registered in 2010 and has no written constitution. CSP has been extremely successful developing a global client base.

Brenda has extensive qualifications and experience in IT and a Masters of Business Administration and has been the public face of CPS. Although not formally appointed she has acted as the managing director of CSP. She has set its strategic direction and personally negotiated all contracts, including bank finance. Her business card reads: Brenda, CSP, Managing Director. Alan has performed a more administrative role overseeing the issuing of invoices, payment of accounts and supervision of administrative staff. His business card reads Alan, CSP, Company Secretary.

Brenda has been on an extended overseas business development trip which included giving the keynote address at a recent IT conference. While she was away Alan met Simone and they exchanged business cards. Simone had developed an innovative App called “Your IT”. She explained to Alan this would revolutionise the IT consultancy market. Alan immediately negotiated a contract with Simone for the purchase of all rights to the App for \$1 million, and for her to work with CSP for the next year. Alan signed the contracts as managing director for and on behalf of CSP.

Alan soon regretted his decision. He realised that CSP would need a loan to fund the purchase and Brenda would be furious with him for having made these decisions. He called Carlos, the local manager of Big Business Bank (“BBB”) and negotiated for CSP to borrow \$1.5M. The loan was to be secured by:

- a mortgage over the business premises owned by CSP; and
- a third party mortgage over a waterfront block of land owned by Brenda and Alan Investments Pty Ltd (“BAI”). The land is the only asset of BAI. Brenda and Alan are the directors, company secretaries and only shareholders of BAI.

Carlos is surprised by Alan’s call as in the past he has always dealt with Brenda. Alan explains that he is now the managing director of CSP as Brenda is regularly overseas with business commitments. Alan adds that the loan is needed to fund the purchase of the “Your IT” app, and purchase a villa in Bali for the use of the CSP creative team to inspire creativity and productivity.

Alan signs as company director and forges Brenda’s signature as company secretary on all documents. BBB pay the proceeds of the loan into the CPS bank account and Alan transfers them into a series of overseas bank accounts that are solely in his name. He then leaves Australia and his whereabouts are currently unknown.

Brenda has now returned and discovered what Alan has done. Simone is due to start work at CSP but Brenda has reviewed the “Your IT” app and believes it is worthless and that Simone is inept and talentless.

Advise Brenda as to the enforceability of:

1. Simone 's employment agreement;
2. The contract for the Your IT app; and
3. BBB's loan to CSP and supporting mortgages.

20 Marks - Suggested time **40 minutes**

Question 4

Kookatoo Pty Ltd is a manufacturer of specialty animal skins and products. Particularly popular and expensive items included eel & stingray skin shoes, wallets, and handbags. These developed a cult following after a number of Hollywood celebrities were photographed wearing them. The sudden demand for Kookatoo products required rapid expansion. Five months ago, full of optimism, the directors Xavier and Yasmin (who are the only shareholders) arranged a \$450,000 loan from Easybank and used this to :

1. pay \$50,000 to enter into a 5 year contract with Fine Skins Pty Ltd ("FSP") to secure supply of an increased volume of "exclusive" skins (at a significant discount from usual pricing);
2. pay \$200,000 to Yasmin's son Roland to enable him to establish a web design consultancy business "Roland's Web Design" which then developed KPL's on line shopping portal;
3. pay \$100,000 for a celebrity endorsement deal with Sim Kashingin, a social media personality
4. loan each director \$50,000 for their personal use

Initially the results were strong growth in the business and an immediate jump in profitability, however after 3 months Sim Kashingin was imprisoned for tax evasion and assaulting her personal assistant. Sales halved overnight and continued to decline.

Kookatoo is now struggling to meet its expenses. Suppliers are not being paid on time, the bank has applied dishonour fees due to insufficient funds being in the account for scheduled payments, the ATO is owed \$100,000, and employees are not being allowed to take any leave. Xavier believes these are temporary cash flow issues and the future of Kookatoo will be secure as soon as another celebrity endorsement can be negotiated. He is currently in negotiations with another celebrity, however the endorsement deal will require another \$100,000.

FSP has now served a statutory demand under s459E of the *Corporations Act* for \$35,000 for skins it has supplied over the past 2 months but not been paid for. Kookatoo can pay this demand, but then will need to negotiate further time in order to pay its other creditors, or obtain a further loan from the bank or have Xavier and Yasmin repay their loans.

- (a) Advise Yasmin on whether she currently has any personal liability and what actions (if any) are available to prevent or minimise such liability now or in the future;
- (b) Assume that a liquidator is appointed to Kookatoo – advise the liquidator regarding whether any action could be taken in respect of the 4 transactions above to increase the pool of assets available to creditors.

20 Marks - Suggested time 40 minutes